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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington DC 20554

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In the matter of )  
)  
Rules Governing Programming )  
Practices of Broadcast Television )  
Networks and Affiliates )

MM Docket No. 95-92

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Comments: Submitted August 23, 1995  
Copies provided for the Commission and Commissioners Hundt, Quello,  
Barrett, Ness and Chong

I represent the owner and operator of two smaller-market network affiliated television stations: WMDT-TV, Salisbury MD, and KTKA-TV, Topeka, KS. Both have primary network affiliation agreements with the ABC Television Network. Our market size, in each case, is smaller than DMA market 140, and in both cases, we adjoin top 10-20 markets nearby.

In reviewing this docket, I am gravely concerned that the Commission may alter or loosen long-standing rules that have stood the test of time; rules that give affiliates, both in big and small markets, the ability to maintain a degree of independence, strength, and flexibility to serve their community IN SPITE OF the wishes of their networks. The rules, now, also tend to protect smaller market affiliates from incursions by nearby large market affiliates.

Of particular concern to our companies are three proposals in this docket:

Regarding the "Right to Reject" rule:

This is a critical protection, which we have had to use occasionally, to prevent the heavy hand of the network from imposing its judgment on what programs we, as the licensee, chose to deliver to our audience. First, the licensee MUST be able to choose, for any reason, what programs it offers. If the network doesn't like it, the network can determine that an affiliation with that station is not appropriate. That's a fair balance, each party having some power over the other.

Perhaps of more concern, however, is that the Commission is suggesting that a station cannot reject programs from a network "based solely on financial considerations." Why not? What if a station is in difficult financial condition, and it must reject a poorly performing (and not lucrative) program from the network for a more profitable program option.... And thus,

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with those profits is able to thrive, and continue to serve the local community with local news and information services. Isn't that the kind of local service the Commission desires of licensees? It takes money to provide local service. The station ought to have the right to earn revenues in whatever ways it best sees fit, particularly if that contributes to local community program service.

Prohibiting stations from rejecting "based solely on financial considerations" would give FCC support to big networks, and hurt the smaller and independently-owned stations that sometimes have to struggle to survive. It ought to be left to stations to determine what is in the public interest, which indeed may be the financial health of the station. It should not be the business of the Commission to impose vague language, such as that proposed, to interfere in such decision-making by a licensee.

Regarding the Exclusive Affiliation prohibition:

We would support retaining this prohibition. In a number of cases, particularly in smaller markets, when a station affiliated with a particular network chooses not to carry its network's program, this program may then be carried by another station in the market, and made available to local viewers when it might not otherwise be were "exclusive" affiliation arrangements in place throughout the market.

And as another example, in our specific cases, we now carry Fox NFL football, but are primary ABC network affiliates. Had the primary network been able to impose on us an exclusive affiliation, we would have been precluded from carrying the Fox football package, a package that on Sunday afternoons is clearly of much greater community service and interest than those programs currently available from our primary network. And because there is no Fox affiliate in our markets, these football games would have otherwise been unavailable on free-over-the-air television to viewers in our market.

Retention of the Exclusive Affiliation Prohibition is essential to local station programming flexibility, and encourages inter-network competition. There is no evidence that any of the established networks (ABC, CBS, NBC) need such protection from competition at the expense of providing local viewers choice of an array of popular network programs. In fact, eliminating the rule will permit those networks who are most able to ward off competition from other networks to enhance their dominant position by insisting on exclusive arrangements.

Regarding the Network Territorial Exclusivity Rule:

It is imperative that smaller market stations, particularly those that are close to, or overshadowed by major nearby markets, be protected from "invasion" into their territory by the larger stations. These larger stations have more negotiation clout with the network, and could, as part of their arrangements, play havoc with the relationship between network and smaller stations nearby, unless those smaller stations are adequately protected.

We would firmly oppose any relaxing of the Territorial Exclusivity Rule. For instance, in some DMAs, there are two network affiliates. In other instances of adjoining DMAs, stations of the same affiliation are so close that their grade B signals overlap. In either of these cases, under a relaxing of this rule, the big market stations may demand network exclusivity throughout the DMA or Grade B contour. This would put the small station out of business, and eliminate that station's public service to its community. Again, granting exclusivity protection to stations beyond their own community of license is clearly a potential threat to smaller nearby stations, and we would reject the Commission permitting this to happen.

Summary

Overall, whether it is elimination of one or several of these protections which affiliates now enjoy under the Rules, there is the potential to turn affiliates into captive outlets for the networks: captive in that they are more and more forced to present programs of the network, rather than their own choosing; and captive in an economic sense, as well. And this is certainly something the Commission should not allow to happen, by loosening such protections either individually, or collectively.

Thank you for your consideration of these comments.

Sincerely,



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Vice President

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